IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6254 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMALABEN CHHANIYA AADODIYA

Versus

DIST.MAGISTRATE BHAVNAGAR

Appearance:

MR RD GAGDEKAR for Petitioner

MR HL JANI LD. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 25/02/2000

ORAL JUDGEMENT

1. This special civil application is directed against the detention order dtd. 12th August, 1999 passed by the District Magistrate, Bhavnagar, whereby the petitioner has been detained under the provisions of Gujarat Prevention of Anti-social Activities Act, 1985

(`PASA Act' for short), 1985. The petitioner is detained in Sabarmati Central jail, since the date of order of detention.

2. No reply to the petition has been filed by any of the respondents. Mr. H.L. Jani, learned A.G.P. has submitted that his representation has been rejected and the detention order has already been confirmed by the Board.

3. The grounds of detention enclosed with the detention order show that eleven criminal cases were registered against the petitioner under the Prohibition Act during the period 6th January, 1999 to 7th July, 1999, out of which six cases are pending trial in which chargesheet have already been filed and rest of five cases were under police investigation when the detention order was passed. The detaining authority has found that the petitioner is a bootlegger and has been engaged in antisocial activities and the business of unauthorised liquor. Reliance has also been placed on statements made by four witnesses against the petitioner on 4th August, 1999. The detaining authority has mentioned that in the facts of this case, other alternatives provided under the Act were not sufficient to deter the petitioner from continuing his antisocial activities and it was necessary to detain him.

4. Having heard both the sides and having gone through the grounds of detention, I find that even if all the grounds as levelled against the petitioner are taken to be true, no case of breach of public order is made out. At the most it is a case of breach of law and order. The impugned detention order, therefore, cannot be sustained in the eye of law, as existence of threat to the public order is the pre-condition for detention order to be passed. The impugned detention order dtd. 12th August, 1999, passed by the District Magistrate, Bhavnagar, is hereby quashed and set aside. It is directed that the petitioner-detenu namely Kamalaben Chhaniyabhai Adodiya, detained in Sabarmati Central Jail, shall be released forthwith, if not required under any other detention order or in any other criminal case. This Special Civil Application is allowed. Rule is made absolute.

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